facts there would be the same elements of estoppel as existed in the English case.

Though it seems difficult, if not impossible, to support the case on the ground of estoppel, there does seem to be a satisfactory basis for the case. If P had, by means of fraud, induced C to sell and convey to him the legal title to certain property and P thereupon sold and conveyed the property to S, who paid value therefor in good faith, S would be protected upon the ground of bona fide purchase for value without notice; that is, the equities of C and S are equal and the legal right being with S, he therefore prevails. In the actual case, does not S stand in an analogous position? The old note had been marked paid and surrendered; S has, therefore, a good common law defence. Under the old practice C, in order to sue on the old note, would have been compelled either to sue entirely in equity or to sue at law and then seek an injunction in equity against S's setting up his common law defence. If S's equity is equal to that of C's, it is clear that he could not recover. On the facts stated in the case, S might have compelled P to pay at the time of the surrender of the first note; whereas, four years later, when S first learned of P's fraud, P had become insolvent and unable to pay anything. It would seem, then, that S's equity is as great as that of C and the case is right in refusing recovery. In case S had not been prejudiced in any way by the fraudulently procured surrender, he would stand in the position of a mere volunteer and would not be protected. *Dwinnell* v. *McKibben,* 93 Iowa 331; *Douglass* v. *Ferris,* 138 N. Y. 192. G. L. C.

THE WAY OF THE TRANSGRESSOR IS EASY, if he is shrewd enough to take an immunity bath, or avail himself of any of a dozen other provisions of the law made with good intentions and left lying about loose enough to be misappropriated. One rule that has served him many a good turn, is that there is no contribution between tort-feasors. Another way of stating it is that the courts are not open to help rogues out of the predicaments into which their dishonest dealings placed them, and the counterpart of the doctrine in equity is that he who comes into equity must come with clean hands. So far therefore as civil liability is concerned, all that is necessary to protect the knave is to get his dupe to join in the knavery. This successfully done he may fleece his victim with impunity. This doctrine has even been applied to criminal liability, under the notion that the prosecution is in some way for the redress of the person injured (*McCord* v. *People,* 46 N. Y. 470; *State* v. *Crowley,* 41 Wis. 271), theerby extending the immunity to both civil and criminal liability; but at this, most of the courts have balked, saying that if both are guilty, that is no reason why each should not be punished, and pointing out that the doctrine is inapplicable, because, in the criminal suit, the state is seeking relief and is no party to the knavery. Criminals have never been allowed to escape by merely showing that others are guilty and have not been punished (*Com.* v. *Morrill,* 8 Cush. 571; *In re Cummins,* 16 Colo. 451, 27 Pac. 887, L. R. A. 752, 25 Am. St. Rep. 291). In this connection the thing desired by the professional criminal is something that will

afford him ample protection against criminal prosecution; for he has sufficient civil protection in the doctrine above mentioned.

This desired protection from criminal liability was found for a while in the notion, declared by Chief Justice HOLT, that we are not to indict a man for making a fool of another, and therefore it is not an offense to be punished criminally to get the better of a man by means of a trick against which common prudence is a sufficient guard, as by lying to him, which the court considered to be only a common cheat to be redressed by a civil action. All that is necessary to make the immunity by this doctrine complete, is to play upon the cupidity of the victim, and make him think he is doing the cheating himself, whereby he will be barred from civil redress. By such means professional knavery soon became an established legitimate business; and it was also discovered that prudence was not such a cheap and common article as had been supposed. What was supposed to be sufficiently guarded against by common prudence was found frequently to catch both wise and otherwise. The result was the statute making it criminal to obtain money, goods, wares, or merchandise by false pertenses. In the interpretation of these statutes the courts again fell into the error of holding that the statute was not violated by a pretense so transparent that anyone of ordinary understanding would not be fooled by it, such as by the offer of the green-goods man to give $1,000 of good money for $100, or a thousand other games that are worked successfully on a large portion of the public, and not always confined to the simple-minded; and the courts also made the mistake of holding that the pretense referred to in the statute must be one relating to present or past alleged fact, and not matter of future promise, or matter of opinion.

With the law thus interpreted, it would seem that the door for the escape of the professional sharper still stands wide open. All he need do is to confine his operations to that simpler part of the community which most needs the protection of the law, which is nevertheless plenty large enough to pay well for the work, and he may ply his trade without fear of punishment. The viciousness of such a doctrine is so manifest that most of the courts have now come to the conclusion that it matters not how manifest the fraud may be if it really did deceive the victim.

But even with this defense eliminated, the professional crook still has a legitimate field of operations where he is liable neither civilly nor criminally; and that is the operation of a cheat which is accomplished by means of false promises, in which the victim is induced to believe that he is to obtain some illegal advantage, and acts for that purpose. It is a disgrace to the law that it is so, but it still remains the fact. A recent case will illustrate the way the trick can be and is being worked. One Foster told prosecutor that if she would give him $110 and accompany him to a place out of the state, he would there procure for her $1,000 in counterfeit money. The bad money was not to be given at once on receipt of the good money, but credit was to be given the crook to get it. The pretense was one of promise only; the prosecutor was induced to believe she would gain an illegal advantage, which shut the doors of the courts against her in seeking civil redress. The pretense was merely promissory, and so not within the statute. Here then is a legitimate

and honorable business, which may be conducted in the open without fear of liability either civilly or criminally. So holds the Court of Appeals of Georgia. *Foster* v. *State,* 68 S. E. 739.

The disgrace of our criminal law is the network of technicalities which enable the manifest criminal to escape liability, and the delay with which the result is reached even when the guilty party does not escape; and these delays and uncertainties combine to deprive our criminal code of its proper restraining influence of the criminal, or protection to the public.

As a final word, applicable to the precise case above put, it is interesting to note that a possible hope of conviction is held out by such decisions as *Crum* v. *State,* 148 Ind. 47 N. E. 833, obtaining money by such a fraud is common law larceny; which is disregarding the rule that if the fraud induces the owner to part with possession only and the taker converts it, the offense is larceny, but if by means of the fraud the crook induces the owner to part with both possession and title to him it is obtaining by false pretenses.

J. R. R.

DUTY OF THE MORTGAGEE TO GIVE NOTICE AND PROOF OF LOSS UNDER STANDARD POLICY.—That the mortgagee is not bound to give notice and proof of loss under the standard insurance policy upon failure of the mortgagor to do so, was recently decided by the Appellate Division of New York State in *Heilbrun* v. *German Alliance Insurance Co. of New York,* 125 N. Y. Supp. 374.

Although the standard insurance policy was adopted by the legislature of New York in 1886, this is the first case in that state on the exact point in issue. Cases have arisen in a few jurisdictions, which have settled the point one way or the other, but in a great majority of the states the question is an open one.

This standard policy requires among other things notice and proof of loss to be rendered by the insured as a condition precedent to a recovery. Such conditions have been held to be reasonable by the courts, and compliance therewith must be affirmatively shown. *Am. Cereal Co.* v. *Western Assur. Co.,* 148 Fed. 77; *Columbia Ins. Co.* v. *Lawrence,* 10 Pet. 507, 9 L. Ed. p. 512; *O'Brien* v. *Com. Ins. Co.,* 63 N. Y. 108. That compliance does not have to be shown unless defendant pleads non-fulfillment, was held in *Adkins* v. *Globe Ins. Co.,* 45 W. Va. 384, 32 S. W. 194. West Virginia seems to be alone in this holding. The mortgagor is of course the proper person to give the notice and proof, but in case he fails there is some conflict as to the right of the mortgagee, and a greater conflict as to his duty, to do so in order to protect himself. The insured must comply, and manifestly this cannot be done by anyone else provided it is possible for him to do so. VANCE, INSURANCE, p. 504, 1 JOYCE, INSURANCE, § 3308. Compliance by the mortgagee will protect the interest of all. *Watertown Ins. Co.* v. *Grover Machine Co.,* 41 Mich. 131, 1 N. W. 961, 32 Am. Rep. 146. See JOYCE, INSURANCE, § 3304 and cases cited. At present there is little doubt as to the right of the mortgagee to comply.